

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEALS OF J.	)	APPEAL NOS. 06-A-2065, 06-A-2066,
CHARLES BLANTON from the decisions of	)	06-A-2067 & 06-A-2068
the Board of Equalization of Canyon County	)	FINAL DECISION
for tax year 2006.	)	AND ORDER

**VACANT LAND APPEALS**

THESE MATTERS came on for consolidated hearing October 24, 2006, in Caldwell, Idaho, before Board Member Lyle R. Cobbs. Board Member David E. Kinghorn participated in this decision. Owner Charles Blanton appeared for himself. Prosecuting Attorney Eric Glover, Chief Deputy Assessor Joe Cox, and County Appraisers Don Towery and Zach Wagoner appeared for Respondent Canyon County. These appeals are taken from a decision of the Canyon County Board of Equalization (BOE) modifying the protest of the valuation for taxing purposes of property described as Parcel Nos. 185490000, 185510000, 185530000 and 185550000.

**The issue on appeal is the market value of vacant land.**

**The decision of the Canyon County Board of Equalization is modified.**

FINDINGS OF FACT

The BOE increased the assessed value of the subject lots from \$5,750 each to either \$13,800 or \$10,700.

Parcel No. 185490000

The assessed land value is \$13,800. Appellant requests the land value be reduced to \$100.

Parcel No. 185510000

The assessed land value is \$10,700. Appellant requests the land value be reduced to \$100.

Parcel No. 185530000

The assessed land value is \$10,700. Appellant requests the land value be reduced to \$100.

Parcel No. 185550000

The assessed land value is \$10,700. Appellant requests the land value be reduced to \$100.

The subject property consists of three 14 by 115 foot vacant lots, and one 18 by 115 foot vacant lot. They are described as Lots 2, 4, 6 and 8 of Block 2, Sandra Corn Sloviacz subdivision located in Middleton, Idaho. A lot of different ownership separates each of the subject lots from one another. Each party appears to have appraised each lot on a standalone basis where they are not contiguous with one another.

A representative for the Middleton City Planner read from Appellant's Exhibit 2 titled "Table 2 Height, Setback and Area Schedule", Minimum Setback Yard Requirements (in feet). Section Five was specifically referenced:

- (5) A total of fifteen feet (15') for both side yards, with one side being not less than five feet (5') and not less than fifteen feet (15') from the adjacent structure.

It was explained the ordinance was one of the legal requirements for building a new structure in compliance with the City of Middleton. The ordinance set backs were amended sometime after 2003, from 10 feet to 12 feet . It was explained a variance is the permitted or specially allowed non-compliance with an ordinance. The planner described that an application for a variance is the procedure to request an action an ordinance does not permit.

Regarding a witness not present for hearing, Appellant made an offer of proof noting Mr. Blackburn would have testified concerning the subject's values. In related 2004 testimony, the realtor from Middleton reported he would not consider listing the subject properties because they have no market value.

Appellant's Exhibit No. 1 was a map showing subject parcels. Taxpayer questioned how anything could be built on a 15 foot wide lot if there had to be a setback of 5 feet on one side, and a setback of 12 feet on the other side? Mr. Towery, for the County, answered that with a variance a structure could be built. Appellant claimed such a variance would amount to a zero lot line, and that with setback requirements including those between buildings, it rendered a building on any of the parcels impossible. Thus, it was concluded the lots have no value other than a nominal value to place the property on the tax roll, as subject lots can not be used economically for any development purpose.

Respondent submitted a three-page exhibit. It included a spreadsheet with lot measurements, square footage, and assessed values for the subject lots. Six vacant land sales were noted in the same subdivision and along with sale information for three townhouse improved sales from the Caldwell area.

The County Appraiser described the 2006 assessed values for subject lots and their narrow 14 foot or 18 foot widths. Five lot sales were 24 feet wide by 115 feet deep, and one was 34 feet wide by 115 feet deep. According to the Respondent, each lot sold for \$34,800, or \$8.90 and \$12.61 per square foot in 2006.

The third page of Respondent's exhibit was an aerial photograph of a subdivision in Caldwell called Nottingshire Development. The subdivision consists of 14-foot and 18-foot wide lots with depths of 115 feet. All are similar to subject lots and have been developed and improved with townhouses. Two of the developed lots (parcels) sold in June and August of 2005 and the third sold in January 2006 for prices ranging from \$49,000 to \$56,900. Respondent calculated a land residual on the sales to separate land value from structure value. The analysis indicated lot values from \$10,250 to \$10,500.

Respondent submitted Exhibit No. 2 which included townhouse photographs and a

footprint of a 15 foot wide townhouse. The first photograph in the exhibit was of a townhouse which sold in August 2005 for \$119,900.

The County maintained the actual use of the subject lots at appraisal was vacant lots suitable for the construction of townhouses. Without documented proof that development was prohibited, Respondent considered the lots useable for the construction of town homes. With documented proof that a variance would not be granted, Respondent would consider a different use and estimated a value of around \$400 for each of the subject lots.

### CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of fair market value. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

The subject property consists of four narrow lots located in Middleton, Idaho. The Assessor's original 2006 assessed values were increased by the County Board of Equalization.

Appellant maintains the separated, narrow strips of property cannot be built on due to the setback ordinance, which thereby reduces the market value. Taxpayer claims a value of \$100 per lot, providing there are no comparable sales.

The County referenced six sales of 24 and 34 foot wide lots, which sold in 2006 for \$34,800, according to the record. Three improved sales were also considered by the County. A land residual indicated lot values from \$10,250 to \$10,500 for the improved lots. There were no sales in record of unbuildable, vacant 14-foot or 18-foot wide lots.

Respondent assessed subject lots as "buildable" having no documentation confirming they are not. The subject values were reduced by 50% (the "narrow lot" adjustment) to arrive at the current assessed values.

The Board finds the actual use of the subject lots on January 1, 2006 was as vacant residential lots. What variances could be granted by the City under the circumstances was not well demonstrated. Respondent noted with documented proof the lots were unbuildable, an estimated nominal value of \$400 would be appropriate for each lot. Appellant claimed \$100 per lot as a “nominal” value. No sales or appraisal analysis was submitted to support either the \$100 claim or the County’s \$400 estimate.

63-205. ASSESSMENT -- MARKET VALUE FOR ASSESSMENT PURPOSES. (1) All real, personal and operating property subject to property taxation must be assessed annually at market value for assessment purposes as of 12:01 a.m. of the first day of January in the year in which such property taxes are levied, except as otherwise provided. Market value for assessment purposes shall be determined according to the requirements of this title or the rules promulgated by the state tax commission.

63-201. DEFINITIONS. As used for property tax purposes in title 63, chapters 1 through 23, Idaho Code, the terms defined in this section shall have the following meanings . . .

(10) "Market value" means the amount of United States dollars or equivalent for which, in all probability, a property would exchange hands between a willing seller, under no compulsion to sell, and an informed, capable buyer, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment.

The definition of market value does not contain or suggest the verbiage “nominal value.”

In determining the value of property the assessor may and should consider cost, location, actual cash sale value and all other factors, known or available to his knowledge, which affect the value of the property assessed. Merris v. Ada County, 100 Idaho 59, 593 P.2d 394 (1979).

In this case, support for the value increase ordered by the BOE was thin or lacking. The majority of the comparable sales submitted by the County took place after the 2006 assessment date, January 1, 2006. There were two improved 2005 sales of townhouses located in Caldwell. The estimated residual land value from these two timely sales was \$10,250. Subject’s unimproved lots were assessed by the BOE for \$13,800 and \$10,700.

It is not what an expert thinks is the proper method of valuation or what is the best method, but is the method used by the assessor legitimate, fair and reasonable. Abbott v. State Tax Commission, 88 Idaho 200 at 206, 398 P.2d 221 (1965).

In light of the taxing authority's (BOE's) apparent reliance on 2006 sales information and consideration of improved sales through a residual technique, taken with the fact that on January 1, 2006 subject lots were vacant and unimproved, the late and substantive increase in the subject's assessed values was not supported.

Therefore, this Board will modify the decision of the Canyon County Board of Equalization, and reduce the assessed values to their original assessed values.

#### FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decisions of the Canyon County Board of Equalization concerning the subject parcels be and the same hereby are, modified to reflect a decrease in the assessed values as follows:

Parc. No. 185490000 -- \$5,750

Parc. No. 185510000 -- \$5,750

Parc. No. 185530000 -- \$5,750

Parc. No. 185550000 -- \$5,750

IT IS FURTHER ORDERED that any taxes which have been paid in excess of those determined to have been due be refunded or applied against other *ad valorem* taxes due from Appellant.

DATED this 15th day of March , 2007.